IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15040 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BALUSINH @ ABHESINH CHAVDA - Petitioner(s)

Versus

COLLECTOR, & 9 - Respondent(s)

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Appearance :
MR JA ADESHRA for Petitioner(s) : 1,
MR MR MENGDEY, AGP for Respondent(s) : 1 - 2.
UNSERVED-EXPIRED (N) for Respondent(s) : 3, 6,
None for Respondent(s) : 4,
NOTICE SERVED for Respondent(s) : 4.2.1, 4.2.2, 4.2.3, 4.2.4, 4.2.5, 7,9 - 10.
MR MURALI N DEVNANI for Respondent(s) : 5,
NOTICE SERVED BY DS for Respondent(s) : 8,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 19/10/2005

ORAL JUDGMENT

1.In this petition under Articles 226 and 227 of the Constitution of India the petitioner has challenged the

legality and validity of the judgment and order passed by the Principal Secretary (Appeals), Revenue Department, State of Gujarat dated 1-5-2004 passed in Revision Application No.5 of 1996 in dismissing the same and confirming the order passed by the Collector, Kheda dated 31-12-1995 passed in Revision Application No.RTS 89/94.

2. Dispute is with regard to the mutation entry No.145 with respect to the land bearing Block No.71 paiki admeasuring 1 acre and 9 gunthas situated at village Jorapura, Tal: Thasra, Dist: Kheda. The land in question was owned by one Dahyabhai Gagabhai and the petitioner purchased the said land from the said Dayabhai Gagabhai by registered sale deed dated 31-7-76. Necessary entry was mutated in the Revenue Record vide entry No.145 dated 3-11-92. The heirs of the original land owner Dayabhai Gagabhai objected the said entry before the Mamlatdar, Thasra and the Mamlatdar, Thasra vide its order dated 4-10-93 rejected their objection and certified the entry No.145. The heirs of the original land owner preferred appeal before the Deputy Collector, Anand challenging the order passed by the Mamlatdar, Thasra dated 4-10-93 certifying the entry No.145 and the Deputy Collector, Anand by its

order dated 17-5-1994 passed in RTS Appeal No.142 of 1993 allowed the said appeal and set aside the entry No.145. Being aggrieved by and dissatisfied with the order passed by the Deputy Collector, Anand dated 17-5-1994 passed in RTS Appeal No.142 of 1993, the petitioner preferred Revision Application before the Collector, Kheda being Revision Application No.RTS/RA/89/94 and the Collector, Kheda by its order dated 31-1-96 dismissed the said revision application. Being aggrieved by and dissatisfied with the order passed by the Collector, Kheda dated 31-1-96, the petitioner preferred Revision Application before the Principal Secretary (Appeals), Revenue Department, State of Gujarat being Revision Application No.MVV/HKP/KHAD/5/96 and the Secretary (Appeals) by its impugned judgment and order dated 1-5-04 dismissed the said revision application confirming the order passed by both the authorities below i.e. the Deputy Collector, Anand as well as the Collector, Kheda. Being aggrieved by and dissatisfied with the judgment and order passed by the Principal Secretary (Appeals), Revenue Department, State of Gujarat dated 1-5-04, the petitioner has preferred the present Special Civil Application under Articles 226 and 227 of the

Constitution of India.

3. Shri JA Adeshara, learned advocate appearing on behalf of the petitioner has vehemently submitted that the petitioner has purchased the land in question by registered sale deed from the original land owner Dayabhai Gagabhai and the necessary entry was mutated in the Revenue Record, which could not have challenged by the heirs of the original land owner. He has also further submitted that the entry in question came to be set aside by all the three authorities below on the ground that by the transaction between the petitioner and the original land owner and by virtue of the aforesaid sale, there will be a breach of provision of the Bombay Prevention of Fragmentation Act, 1947 (for short “the Act”). He has relied upon the judgment of the learned Single Judge of this court in the case of Evergreen Apartment Cooperative Housing Society V Special Secretary (Revenue) reported in 1991(1) GLR page 113 and in the case of Siddharthbhai B Shah and Others V. State of Gujarat and Others reported in 1999(3) GLR page 2527. Shri Adeshara has further submitted that the Revenue Authority while exercising RTS jurisdiction, has no jurisdiction to consider the legality and validity of the transaction on the ground

that the same is in breach of provision of the Act. He has also relied upon the judgment of the learned Single Judge of this court in the case of Ganeshbhai Manilal Mayavanshi V State of Gujarat and Others reported in 2005(9) GHJ page 634. Shri Adeshara has further submitted that as held by this court in the aforesaid case, the Revenue Authority is bound to give effect to the registered sale deed in Revenue Record and that if the said authority is of the opinion that the transaction in question is in breach of a particular Act then necessary entry can be made to that effect and the matter can be referred to the Competent Authority for initiating the proceedings for a breach of that particular Act, therefore, it is requested to allow the present Special Civil Application.

4. Shri MN Devnani, learned advocate appearing on behalf of the contesting respondents has submitted that the transaction in question was in breach of provision of the Act and there will be a block. The Deputy Collector was justified in setting aside the entry No.145, which is rightly confirmed by the Collector, Kheda as well as the Secretary (Appeals) and therefore, it is requested to dismiss the present Special Civil Application.

5. Shri MR Mengdey, learned AGP has also tried to support

the judgment and order passed by the Principal Secretary (Appeals)for the aforesaid reasons by adopting the argument submitted on behalf of the private respondents.

6. Heard learned advocates appearing on behalf of the parties.

7. It is not in dispute that the petitioner has purchased the land in question by registered sale deed in the year 1976. It is also not in dispute that the entry came to be challenged by the heirs of the original land owner, who have sold the land to the petitioner. The Revenue Authority, more particularly, the Deputy Collector, Anand has set aside the entry No.145 on the ground that by virtue of the aforesaid sale and transaction, there will be a breach of the Act. As held by this court in the case of Evergreen Apartment Cooperative Housing Society (supra) and Siddharthbhai B Shah and Others (supra), the Revenue Authority while exercising the RTS jurisdiction, has no jurisdiction to consider the breach of any other law and the same is required to be considered by the appropriate authority under the appropriate law. As per the decision of this court in the case of Ganeshbhai Manilal Mayavanshi(supra), the Revenue Authority is bound to

give effect to the registered sale deed in the Revenue Record. However, if the Authority is of the opinion that the said transaction is in breach of a particular Act, then necessary entry can be made and the matter can be referred to the Competent Authority for initiating the proceedings for breach of the said Act.

8. Under the circumstances, in the present case also, while restoring the entry No.145, the additional entry can be made that according to the Authority, the said transaction is in breach of Act and that it will be open for the appropriate authority under the Act to initiate the proceedings also.

9. For the reasons as stated above, the petition succeeds. The judgment and order passed by the Principle Secretary dated 1-5-04 passed in Revision Application No.MVV/HKP/KHAD/5/96, order passed by the Collector dated 31-1-1996 passed in Revision Application No.RTS/RA/89/94 and the order passed by the Deputy Collector dated 17-5-95 passed in RTS Appeal No.142/93 are hereby quashed and set aside and the order passed by the Mamlatdar, Thasra dated 4-10-93 as well as the Revenue entry No.145 is hereby restored. However, the Revenue Authority is directed to make additional entry in the Revenue Record that according to the Authority, the transaction between the petitioners and the

original land owner is in breach of the Act. It will also be open for the appropriate authority to initiate the proceedings for alleged breach of the Act by the sale / transaction between the petitioner and the original land owner with regard to the land in question if, permissible under the law and merely because the entry No.145 is restored, the appropriate authority is not precluded from initiating the proceedings.

10. Rule is made absolute to the aforesaid extent. However, there will be no order as to costs.

(M.R.SHAH,J)

Shekhar/-